



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2012-0032]

Commercial Driver's License Standards: Application for Exemption; Daimler Trucks North America (Daimler)

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition; grant of application for exemption.

SUMMARY: FMCSA announces its decision to grant Daimler Trucks North America's (Daimler) application for an exemption renewal for one Daimler driver to drive commercial motor vehicles (CMV) in the United States without possessing a commercial driver's license (CDL) issued by one of the States. Dr. Wolfgang Bernhard is the head of the Daimler Trucks and Buses Division who will test-drive Daimler vehicles on U.S. roads to better understand product requirements for these vehicles in "real world" environments and verify results. He holds a valid German commercial license but lacks the U.S. residency necessary to obtain a CDL issued by one of the States. FMCSA believes that the process for obtaining a German-issued CDL is comparable to or is effective as the U.S. CDL requirements and ensures that this driver will likely achieve a level of safety that is equivalent to or greater than the level of safety that would be obtained in the absence of the exemption.

DATES: This exemption is effective August 29, 2016, and expires August 28, 2018.

ADDRESSES:

Docket: For access to the docket to read background documents or comments, go to www.regulations.gov at any time or visit Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., ET,

Monday through Friday, except Federal holidays. The on-line FDMS is available 24 hours each day, 365 days each year.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

FOR FURTHER INFORMATION CONTACT: For information concerning this notice, please contact Mr. Tom Yager, Chief, FMCSA Driver and Carrier Operations Division; Telephone: (614) 942-6477. E-mail: MCPSD@dot.gov. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to www.regulations.gov and insert the docket number, “FMCSA-2012-0032 in the “Keyword” box and click “Search.” Next, click the “Open Docket Folder” button and choose the document to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an

opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews the safety analyses and the public comments, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reason for the grant or denial, and, if granted, the specific person or class of persons receiving the exemption, and the regulatory provision or provisions from which exemption is granted. The notice must also specify the effective period of the exemption (up to 5 years), and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

Section 5206(a)(3) of the "Fixing America's Surface Transportation Act," (FAST Act), [Pub.L.114-94, 129 Stat.1312, 1537, Dec.4, 2015] amended 49 U.S.C. 31315(b) by adding a new paragraph (2) which permits exemptions for no longer than 5 years from their dates of inception, instead of the previous 2 years. This statutory provision will be codified in 49 CFR part 381 in a forthcoming rulemaking.

III. Request for Exemption

Daimler requests a renewal of its exemption from 49 CFR 383.23, which prescribes licensing requirements for drivers operating CMVs in interstate or intrastate commerce, for the next 5 years for the chief executive of its Trucks and Buses Division. Dr. Wolfgang Bernhard, holds a valid German commercial license, but is unable to obtain a CDL in any of the U.S. States due to residency requirements. A copy of the request for renewal, dated February 22 and 23, 2016, is in the docket identified at the beginning of this notice.

FMCSA initially granted an exemption to Dr. Bernhard on August 29, 2014 (79 FR 51641). This exemption was effective August 29, 2014, and expires August 29, 2016. Detailed

information about the qualifications and experience of Dr. Bernhard was provided by Daimler in its original application, a copy of which is in the docket. Renewal of the exemption will enable Dr. Bernhard to operate CMVs in interstate or intrastate commerce to support Daimler field tests designed to meet future vehicle safety and environmental requirements and to promote technological advancements in vehicle safety systems and emissions reductions. Dr. Bernhard needs to drive Daimler vehicles on public roads to better understand “real world” environments in the U.S. market. According to Daimler, Dr. Bernhard will typically drive for no more than 6 hours per day for 2 consecutive days, and that 10 percent of the test driving will be on two-lane state highways, while 90 percent will be on interstate highways. The driving will consist of no more than 200 miles per day, for a total of 400 miles during a two-day period on a quarterly basis. He will in all cases be accompanied by a holder of a U.S. CDL who is familiar with the routes to be traveled.

Daimler has explained in prior exemption requests that the German knowledge and skills tests and training program ensure that Daimler’s drivers operating under the exemption will achieve a level of safety that is equivalent to, or greater than, the level of safety obtained by complying with the U.S. requirement for a CDL. Furthermore, according to Daimler, Dr. Bernhard is familiar with the operation of CMVs worldwide.

IV. Method to Ensure an Equivalent or Greater Level of Safety

FMCSA has previously determined that the process for obtaining a German commercial license is comparable to, or as effective as, the requirements of part 383, and adequately assesses the driver’s ability to operate CMVs in the U.S. Since 2012, FMCSA has granted Daimler drivers similar exemptions [May 25, 2012 (77 FR 31422); July 22, 2014 (79 FR 42626); March 27, 2015 (80 FR 16511); October 5, 2015 (80 FR 60220); December 7, 2015 (80 FR 76059); December 21, 2015 (80 FR 79410)].

V. Public Comments

On March 28, 2016, FMCSA published notice of this application and requested public comment (81 FR 17242). No comments were submitted.

VI. FMCSA Decision

Based upon the merits of this application, including Dr. Bernhard's extensive driving experience and safety record, and the fact that he has successfully completed the requisite training and testing to obtain a German commercial license, FMCSA concluded that the exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption, in accordance with § 381.305(a).

VII. Terms and Conditions for the Exemption

FMCSA grants Daimler and Dr. Wolfgang Bernhard an exemption from the CDL requirement in 49 CFR 383.23 to allow Dr. Bernhard to drive CMVs in this country without a U.S. State-issued CDL, subject to the following terms and conditions: (1) The driver and carrier must comply with all other applicable provisions of the Federal Motor Carrier Safety Regulations (FMCSRs) (49 CFR parts 350-399); (2) the driver must be in possession of the exemption document and a valid German commercial license; (3) the driver must be employed by and operate the CMV within the scope of his duties for Daimler; (4) at all times while operating a CMV under this exemption, the driver must be accompanied by a holder of a U.S. CDL who is familiar with the routes traveled; (5) Daimler must notify FMCSA in writing within 5 business days of any accident, as defined in 49 CFR 390.5, involving this driver; and (6) Daimler must notify FMCSA in writing if this driver is convicted of a disqualifying offense under § 383.51 or § 391.15 of the FMCSRs.

In accordance with 49 U.S.C. 31315 and 31136(e), the exemption will be valid for 5 years unless revoked earlier by the FMCSA. The exemption will be revoked if (1) Dr. Bernhard fails to comply with the terms and conditions of the exemption; (2) the exemption results in a

lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would be inconsistent with the goals and objectives of 49 U.S.C. 31315 and 31136.

VIII. Preemption

In accordance with 49 U.S.C. 31315(d), as implemented by 49 CFR 381.600, during the period this exemption is in effect, no State shall enforce any law or regulation applicable to interstate or intrastate commerce that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption.

Issued on: August 31, 2016

T.F. Scott Darling, III
Administrator

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